UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA FORT MYERS DIVISION

In	**
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MICHAEL NORYS and REBECCA NORYS,

Case No.: 9:14-bk-08896-FMD

Chapter 7

Debtors.

DEBTORS' MOTION TO DETERMINE SECURED STATUS OF USAA FEDERAL SAVINGS BANK AND TO STRIP LIEN EFFECTIVE UPON OR OTHER COURT ORDER AS SPECIFIED THEREIN

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider this motion, objection, or other matter without further notice or hearing unless a party in interest files a response within 30 days from the date set forth on the proof of service attached to this paper plus an additional 3 days for service. If you object to the relief requested in this paper, you must file your response with the Clerk of Court at United States Courthouse, 801 N. Florida Avenue, Tampa, FL 33602, and serve a copy on The Dellutri Law Group, P.A., 1436 Royal Palm Square Blvd., Fort Myers, Florida 33919, any other appropriate persons within the time allowed.

If you file and serve response within the time permitted, the Court may schedule and notify you of a hearing or the Court may consider the response and may grant or deny the relief requested without a hearing. If you do not file a response within the time permitted, the Court will consider that you do not oppose relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

COME NOW the Debtors, by and through undersigned counsel and pursuant to 11 U.S.C. § 506, Rule 3012 of the Federal Rules of Bankruptcy Procedure, Local Rule 3012-1, Administrative Order FTM-2009-1 and *McNeal v. GMAC Mortgage, LLC*, 2012 U.S. App. LEXIS 9589, *4-5, and hereby file this Motion to Determine Secured Status of USAA Federal Savings Bank and to Strip Lien Effective Upon or Other Court Order as Specified Therein and state as follows:

- 1. The Debtors filed a Chapter 13 Bankruptcy on July 31, 2014.
- 2. The Debtors case was converted to a Chapter 7 on September 26, 2014.

3. The Debtors own real property (the "Real Property") located at 4201 SE 2nd Avenue, Cape Coral, FL 33904, and more particularly described as follows:

Cape Coral Unit 10,BLK 248 PB13 PG27, LOTS 66 + 67

- 4. The Real Property is encumbered by two mortgages:
 - a. Ocwen Loan Servicing, account number 0947, holds the first mortgage recorded on July 2, 2003, at Plat Book 3979, Page 3645, Instrument No. 5877008, 19 PGS of the official records of Lee County, Florida and is owed the amount of \$185,294.00.
 - b. USAA Federal Savings Bank, account number 7492, holds a second mortgage recorded on December 16, 2005, Instrument No. 2005000174049, 6 PGS of the Public Records of Lee County, Florida, and has filed Claim No. 12 in the amount of \$158,923.82.
- 5. Based on Lee County Property Appraiser, the value of the Real Property is \$124,408.00.
 - 6. Accordingly, USAA Federal Savings Bank's lien is completely unsecured.
- 7. Pursuant to the Eleventh Circuit decision in *McNeal*, as the lien is completely unsecured, the Debtors are entitled to strip the lien under § 506.
 - 8. Debtors request the lien strip become effective upon discharge.

WHEREFORE the Debtors respectfully request that the Court enter an order:

- a) Granting the Motion;
- b) Determining the value of the Real Property to be the amount stated above;
- c) Determining that Creditor's claim shall be treated as an unsecured claim;
- d) Voiding the mortgage lien of USAA Federal Savings Bank effective upon discharge or other Court Order as specified therein; and
 - e) Granting such other and further relief as the Court deems appropriate.

VERIFICATION

I, Michael Norys and Rebecca Norys, named as a Debtor in this case, verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information and belief:

Signature:

Signature Rebecca Executed on (Date): 1-16-15

Executed on (Date): 1-16-15

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished

U.S. Trustee

Diane L. Jensen

Max A. Zaleski, Esq., Weinstein, Pinson & Riley, P.S.

------And by Certified Mail to:

David Bohne, USAA, FSB President, 9800 Fredericksburg Rd., San Antonio, TX 78288------And by US First Class Mail to:

Michael and Rebecca Norys, 4201 SE 2nd Avenue, Cape Coral, FL 33904 USAA Federal Savings Bank C/O Weinstein, Pinson & Riley PS, 2001 Western Avenue, Ste 400, Seattle, WA 98121

> THE DELLUTRI LAW GROUP, P.A. 1436 Royal Palm Square Boulevard Fort Myers, Florida 33919 Phone: (239) 939-0900 Facsimile: (239) 939-0588

/s/ Carmen Dellutri

CARMEN DELLUTRI, Esq.

FBN: 0044385

Property Data

STRAP: 12-45-23-C1-00248.0660 Folio ID: 10109247

Owner Of Record

NORYS MICHAEL A + REBECCA S 4201 SE 2ND AVE CAPE CORAL FL 33904

Site Address

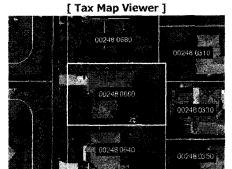
4201 SE 2ND AVE CAPE CORAL FL 33904

Legal Description

CAPE CORAL UNIT 10 BLK 248 PB 13 PG 27 LOTS 66 + 67

Classification / DOR Code

SINGLE FAMILY RESIDENTIAL / 01



[Pictometry Aerial Viewer]

Image of Structure

10109247 1 02/11/2008 Photo Date February of 2008 >

Property Values (2014 Tax Roll) 11

124,408

124,408

85,265

35,265

39,143

0

Exemptions

Attributes (See Appraisal Details below for current values)

	Homestead / Additional	25,000 / 25,000	Land Units Of Measure 😉	ர	
3	Widow / Widower	0 / 0	Units 9	1.00	
3	Disability	0	Frontage	86	
)	Wholly	0	Depth	140	
5	Senior	0	Total Number of Buildings	1	
5	Agriculture	0	Total Bedrooms / Bathrooms	4 / 3.0	
3			Total Living Area 😉	1,773	
			1st Year Building on Tax Roll \varTheta	1969	
			Historic District	No	

Portability Applied

Cap Assessed

Cap Difference

Taxable

Just Assessed

Property Value History

Tax Year	Just	Market Assessed	Capped Assessed	Taxable	Source
1992	59,430	59,430	59,430	59,430	ROLL
1993	62,260	62,260	62,260	62,260	ROLL
1994	59,880	59,880	59,880	59,880	ROLL
1995	63,850	63,850	63,850	63,850	ROLL
1996	65,180	65,180	65,180	65,180	ROLL
1997	65,970	65,970	65,970	65,970	ROLL.
1998	64,500	64,500	64,500	64,500	ROLL
1999	65,680	65,680	65,680	65,680	ROLL
2000	68,030	68,030	68,030	43,030	SOH
2001	72,860	72,860	70,070	45,070	SOH
2002	82,470	82,470	71,190	46,190	SOH
2003	97,840	97,840	73,300	48,300	SOH
2004	114,720	114,720	114,720	89,720	SOH
2005	131,860	131,860	118,160	93,160	SOH
2006	198,770	198,770	139,570	114,570	E&I
2007	216,930	216,930	143,060	118,060	E&I
2008	169,460	169,460	147,350	97,350	E&I
2009	98,360	98,360	98,360	48,360	SOH
2010	86,696	86,696	86,696	36,696	SOH
2011	80,195	80,195	80,195	30,195	SOH
2012	90,504	90,504	82,601	32,601	SOH
2013	113,800	113,800	84,005	34,005	SOH
2014	124,408	124,408	85,265	35,265	SOH

The Just value is the total parcel assessment (less any considerations for the cost of sale). This is the closest value to Fair Market Value we produce and is dated as of January 1st of the tax year in question (F.A.C. 12D-1.002).

The **Market Assessed** value is the total parcel assessment (less any considerations for the cost of sale) based upon the assessment standard. Most parcels are assessed based either upon the *Highest and Best Use* standard or the *Present Use* standard (*F.S. 193.011*). For *Agriculturally Classified* parcels (or parts thereof), only agricultural uses are considered in the assessment (*F.S. 193.461 (6) (a)*). The difference between the *Highest and Best Use/Present Use* and the *Agricultural Use* is often referred to as the *Agricultural Exemption*. (i.e. Market Assessed = Just - Agricultural Exemption)